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25 Colum. J. Gender & L. 41-49 (2013)

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RUTH BADER GINSBURG'S EQUAL PROTECTION CLAUSE: 1970-80

WENDY W. WILLIAMS*

Professor Ruth Bader Ginsburg of Columbia Law School was the leading Supreme Court litigator for gender equality in the crucial decade, 1970-80. In addition to teaching her classes, producing academic articles, and co-authoring the first casebook on sex discrimination and the law, she worked on some sixty cases (depending on how one counts), including over two dozen cases in the Supreme Court. Rumor has it she did not sleep for ten years; her prodigious output gives the rumor some credence.¹ Her impact on the law during that critical decade earned her the title "the Thurgood Marshall of the women's movement" and secured her place in history—even before she became a federal appellate judge and Supreme Court justice.

I will devote my allotted space to two, intimately intertwined, topics: first, Ruth Ginsburg and the Supreme Court's standard of review in sex discrimination cases, and second, the substance of Ruth Ginsburg's concept of gender equality in law.

Ruth Ginsburg and the Standard of Review

The Supreme Court, by 1970, had settled on what had become known as the "two-tier" approach to equal protection cases. Cases challenging racial classifications were in the top tier; the Court subjected those classifications to "strict scrutiny" and placed the burden on the state to defend its classification by showing a "compelling interest" in its race-based law or practice. Rare was the race line that survived that standard. Almost all other kinds of classification fell into the lower tier: in such cases the court would settle for almost any colorable rationale the state could offer up for its categories. Gender-based classifications were firmly relegated to the lower tier.²

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1 But at least we know she didn't go hungry—her spouse and life partner, tax lawyer and law professor Martin Ginsburg (since the posthumous publication of his recipes this past December, not only a great chef but a famous one) saw to that. See *CHEF SUPREME: MARTIN GINSBURG* (Supreme Court Historical Society, 2011). Marty Ginsburg died of cancer on June 27, 2010.

2 See, e.g., *Developments in the Law: Equal Protection*, 82 HARV. L. REV. 1065 (1969).

Ruth Ginsburg called the lower tier approach to sex discrimination the “anything goes” standard.³ When she began her ten-year litigation career, the Court had never encountered a sex classification that it did not consider perfectly reasonable and constitutionally sound. This meant that the first challenge for women’s rights advocates of the early 1970s was to persuade the Court to undertake a more skeptical look at sex-based laws. Professor Ginsburg led the way: she was the first lawyer to argue to the United States Supreme Court that sex classifications should, like race classifications, be subjected to the highest standard of review.⁴ She did this in the ACLU’s Brandeis-style brief in *Reed v. Reed*, submitted to the Court in the summer of 1971. In it, she recounted in detail the history of the legally-enforced second-class status of women and pointed to the historical analogy between the political, social, and legal status of women and that of African Americans.⁵

In its brief opinion issued in November of ’71, the Court did not adopt Ginsburg’s position on standard of review or even refer to it, but it did, for the first time in its history, strike down a gender-line in law as a violation of the equal protection clause of the Fourteenth Amendment. Better yet, the language of the *Reed* decision hinted, tantalizingly, at a new, more skeptical approach to gender-based laws.⁶

3 See, e.g., Brief for American Civil Liberties Union as Amicus Curiae, Supporting Appellants at 13, *Craig v. Boren*, 429 U.S. 190 (1976), 1976 WL 181333 (1976).

4 An amicus brief by ACLU Board member Dorothy Kenyon in the 1961 case of *Hoyt v. Florida*, 368 U.S. 57 (1961), argued to the Court that sex, like race, was a “distinct class” but did not explicitly frame it as a matter of the standard of review. *Hoyt* upheld a jury statute that required women, but not men, affirmatively to sign up for jury duty. Declaring that the case “in no way resembles those involving race or color,” the Supreme Court reasoned that “woman is still regarded as the center of home and family life.” *Id.* at 68. Accordingly, states could constitutionally conclude that “a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities.” *Id.* at 62. In 1966, Kenyon and Pauli Murray, a lawyer who had formulated an approach to sex discrimination under the equal protection clause for the President’s Commission on the Status of Women in 1962 and who was by then on the ACLU Board with Kenyon, tried to get another jury discrimination case to the Supreme Court for a second try at the race-sex analogy argument, but were thwarted when the ACLU won the case before a three-judge court and the defendant state of Alabama decided not to appeal it. *White v. Crook*, 251 F. Supp. 401 (M.D. Ala. 1966). It was left to Ginsburg to realize Kenyon’s and Murray’s dream.

5 The *Reed* brief was sixty-eight pages long, eighty-eight if one includes the appendix of state laws from around the country drawing sex lines similar to that in the *Reed* statute. The Table of Authorities was twelve pages long, a compendium of just about every then-existing case, law review article, book, federal report, sociological, political or historical treatise, or human rights document addressing gender equality. By 1980, such writings on gender and women’s equality had expanded many fold.

6 *Reed v. Reed*, 404 U.S. 71 (1971). This was the tantalizing hint: the Court, without explanation, bypassed the more recent “anything goes” rationality test, instead using language from a case from the 1920s with an uncharacteristically stronger version (supplied and quoted in the ACLU brief): “A classification ‘must be

Two years later, in *Frontiero v. Richardson*,⁷ Professor Ginsburg's argument that strict scrutiny should apply to gender cases persuaded four but not the necessary five justices. Pragmatist that Ginsburg was, she thereafter focused on coaxing the Court to adopt a mid-level "heightened" review for sex discrimination cases. That mission was accomplished in 1976, when Justice Brennan formulated an intermediate standard for gender cases in *Craig v. Boren*.⁸ Ruth Ginsburg had advised the plaintiffs' lawyer in that case, submitted an amicus brief for the ACLU, and sat at counsel table for his oral argument to the Supreme Court.⁹

Ruth Ginsburg's substantive vision of gender equality

How Ruth Ginsburg has been characterized—and lauded or criticized based on this characterization—is as a proponent of “formal equality” for the sexes, viewing

reasonable, not arbitrary, and must rest upon some ground of difference having a *fair and substantial relation to the object of the legislation*, so that all persons similarly circumstanced shall be treated alike.” *Reed*, 404 U.S. at 76. And while the Court did not say that sex classifications should be subjected to the “*strict scrutiny*” it directed at racial classifications, it did say, without any explanation, that the Idaho sex-based law was subject to “*scrutiny*.” *Id.* at 75.

7 *Frontiero v. Richardson*, 411 U.S. 677 (1973) (Justice Brennan writing for four justices). Four additional justices agreed that the statute was unconstitutional, but declined to declare sex a suspect classification. Only Justice Rehnquist dissented. The Supreme Court's October Term, 1972, during which *Frontiero* was briefed and argued, was also Ginsburg's maiden academic year as Columbia Law School's first tenured woman law professor, as well as director of the newly established Women's Rights Project of the ACLU. (Ruth Ginsburg was preceded at Columbia by Harriet Rabb, hired as a non-tenure track clinical teacher in the Employment Rights Project the year before, who became assistant dean for urban affairs (basically, the clinics dean) the year Ginsburg was hired.)

8 *Craig v. Boren*, 429 U.S. 190, 197–98 (1976) (“[C]lassifications that distinguish between males and females are ‘subject to scrutiny under the Equal Protection Clause.’ To withstand constitutional challenge, . . . classifications by gender must serve *important* governmental objectives and must be *substantially related* to achievement of those objectives.” (emphasis added)).

9 Twenty years later, Justice Ruth Ginsburg's opinion in the Virginia Military Institute case tweaked the *Craig* standard upward, bringing it closer to the race standard. *United States v. Virginia*, 518 U.S. 515, 532–33 (1996) (emphasis added):

[T]he reviewing court must determine whether the proffered justification is “*exceedingly persuasive*.” The burden of justification is demanding and it rests entirely on the State. . . . The State must show “at least that the [challenged] classification serves ‘important governmental objectives and that the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’ . . . The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.

discrimination against men and women as equally reprehensible in the same way some conservative justices viewed discrimination against white people as the moral and legal equivalent of discrimination against minorities. It has been said that she selected mostly male plaintiffs as a strategy to gain male judges' sympathies.¹⁰ In my view, the critics are mistaken in at least two respects: one on the numbers and, more importantly, one on Ginsburg's substantive view of gender equality.¹¹

The gender-based numbers: Critics seemed to have looked only at the Ginsburg cases in which the Supreme Court issued a decision on the merits after oral argument. There are six such cases. In those cases, men's equality cases did, indeed, outnumber women's equality cases 4-2—or 4-1 if you remove *Frontiero* from the count as a case with both a female and a male plaintiff.¹² But it seems to me that if one is to judge Ginsburg fairly on the numbers, one must look not only at the Ginsburg cases that the Supreme Court decided on the merits, but also the cases the Court chose to dispose of in other ways. One should count, for example, the case the Court decided per curiam without argument (female plaintiff)¹³ and the two cases that were remanded for mootness determinations (both female plaintiffs).¹⁴ And, of course, one must also include in the

10 See generally MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (2d ed. 2002), especially 27-28, 39, 127.

11 A third respect is that Ginsburg was a strong proponent of affirmative action designed to remedy past discrimination and address persistent inequality. This she carefully distinguished from special treatment of women on the basis of their differences from men. Such "benign" discrimination, she argued, was harmful to women. See, e.g., Ruth Bader Ginsburg, *Some Thoughts on Benign Classification in the Context of Sex*, 10 CONN. L. REV. 814, 822-25 (1978); Ruth Bader Ginsburg, *Women, Equality, and the Bakke Case*, 4 C.L. L. REV. 8 (Nov./Dec. 1977); Ruth Bader Ginsburg, *Gender and the Constitution*, 44 U. CIN. L. REV. 1, 28-34 (1975); a fourth respect: she pressed for extension of benefits reserved for men to women, rather than eradication of benefits for everyone. See, e.g., KENNETH M. DAVIDSON, RUTH BADER GINSBURG & HERMA HILL KAY, SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS 94-99 (1974).

12 Cases decided on the merits after oral argument: *Reed v. Reed*, 404 U.S. 71 (1971) (Sally Reed); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (Sharron Frontiero and Joseph Frontiero); *Kahn v. Shevin*, 416 U.S. 351 (Melvin Kahn); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) (Stephen Wiesenfeld); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (Leon Goldfarb); *Duren v. Missouri*, 439 U.S. 357 (1979) (Billy Duren). One might count *Frontiero* as a female plaintiff case because it was Lt. Sharron Frontiero who sought and was denied medical and housing benefits for her non-military spouse, Joseph. Indeed, Justice Brennan, reflecting the approach in Ginsburg's amicus brief for the ACLU, framed the issue this way: "The question before us concerns the right of a female member of the uniformed services to claim her spouse as a 'dependent' for the purposes of obtaining increased quarters allowances and medical and dental benefits . . . on an equal footing with male members." 416 U.S. at 678.

13 *Turner v. Dep't of Employment Sec.*, 423 U.S. 44 (1975) (per curiam) (Mary Ann Turner, denied unemployment benefits when unemployed because of pregnancy).

14 *Struck v. Sec'y of Def.*, 409 U.S. 1071 (1972) (Susan Struck challenged discharge order from Air Force

count cases in which Ginsburg sought but was denied review (six cases, all seeking to vindicate women's equality).¹⁵ This more accurate count changes the score from 4-2 for men to 11-4 for women.¹⁶ But having gotten that off my chest, I must say that this bean counting misses the more fundamental point: Ginsburg's substantive vision of gender equality was considerably richer and more nuanced than her critics recognized—indeed, it was a vision that renders my counting exercise irrelevant.

The substantive vision.¹⁷ The substance of Ruth Ginsburg's vision of the nature of gender inequality is captured by my favorite RBG-ism: "sex-role pigeon-holing."

under rule requiring discharge of pregnant officers unless they obtained abortion); *Edwards v. Healy*, 421 U.S. 772 (1975) (Marsha Healy for class; challenge to sex-based exemption of women from jury service.) Or maybe *Healy* shouldn't count; it also had male plaintiffs who complained that they were subject to more onerous jury service because similarly situated women were not required to serve.

15 *Schattman v. Texas Emp't Comm'n*, 410 U.S. 959 (1972) (Mary Ellen Schattman, fired for being two months pregnant); *Millenson v. New Hotel Monteleone*, 414 U.S. 1011 (1973) (Debra Millenson, challenging the exclusion of women from a hotel grill); *Robinson v. Bd. of Regents*, 416 U.S. 982 (1973) (Ruth Robinson, challenging dormitory curfew for women students only); *Junior Chamber of Commerce of Philadelphia v. United States Junior Chamber of Commerce*, 419 U.S. 1026 (1974) (challenging bylaw of National Jaycees limiting membership to males; though the plaintiff was the Philadelphia Jaycees, I think it fair to include this as a female case because its objective was to end a discrimination against women); *Stubblefield v. Tennessee*, 420 U.S. 903 (1974) (Edna Stubblefield was convicted of murder and challenged the Tennessee sex-based exemption of women from the state's juries.) Note that *Duren v. Missouri*, 439 U.S. 357, a case raising the same issue but asserted by a male criminal defendant, was later granted review and decided by the Court.

16 And if we throw in *Coffin v. Califano*, 430 U.S. 924 (1977) (Edgar) and *Jablon v. Califano*, 430 U.S. 924 (1977) (Betty and Jacob), cases raising the same issue as *Califano v. Goldfarb*, 430 U.S. 199, and held by the Supreme Court for *Goldfarb*'s resolution, that's one more male plaintiff and one with both male and female plaintiffs, so the score would change to 11-5 for women. But then there's *Vorchheimer v. Sch. Dist. of Philadelphia*, 430 U.S. 703 (1976): Susan Lynn Vorchheimer, by her parents, challenged her exclusion from Philadelphia's all-male academic public high school; one justice recused himself and the rest split down the middle. The result: an affirmance by an evenly divided court, with no opinion and no precedential value. Vorchheimer's inclusion depends on how one thinks about the strategic split between Ruth Bader Ginsburg and Vorchheimer's Philadelphia lawyer that resulted in Ruth Bader Ginsburg's withdrawal from the case, after submitting the Petitioner's Brief but before the Reply Brief. So maybe the count is 12-5 or maybe not. Oh, and we might also count *Moritz v. Comm'r*, 469 F.2d 466 (10 Cir 1972), *cert. denied*, 412 U.S. 906 (1973) (Charles Moritz), which the Tenth Circuit decided in favor of Ruth Bader Ginsburg's client. The government sought review in the Supreme Court, Ruth Bader Ginsburg filed a reply opposing review, and the Supreme Court decided not to take the case. So maybe the count is 12-6. Or not.

17 For a satisfying account of the theoretical underpinnings of Ruth Bader Ginsburg's litigation for gender equality in the 1970s, see Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83 (2010). A similarly satisfying account of the historical origins of the 1970s approach to sex discrimination is SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011).

Whether her client was a man or a woman (or, as in *Frontiero*, both), she crafted an argument that seems to be uniquely her own: she litigated each case as if her client's injury derived from the subordinate status or lesser economic importance of women. If the plaintiff was a man, she showed how his legal grievance derived from the lesser value placed on women's contributions, demonstrating how stereotypes about women's proper role underpinned the legal disadvantages suffered not only by women but, derivatively, by the men she represented, as well.¹⁸

Sex discrimination was, she said, a two-edged sword. In response to queries from Justices Stewart and Stevens during her oral argument on behalf of Leon Goldfarb,¹⁹ she explained why discrimination against men should be tested under the same standard as discrimination against women: "almost every discrimination against males operates against females, as well. . . . I don't know of any line that doesn't work as a two-edged sword, doesn't hurt both sexes." In her amicus brief in *Craig*, she put it this way: "Upon deeper inspection . . . the discrimination is revealed as simply another manifestation of traditional attitudes and prejudices about the expected behavior and roles of the two sexes in our society, part of the myriad signals and messages that daily underscore the notion of men as society's active members, women as men's quiescent companions, members of the 'other' or second sex."²⁰

Ruth Ginsburg, in short, was targeting, laser-like, the complex and pervasive legal framework that treated women as yin and men as yang,²¹ and either rewarded them for

18 Along the way, Ginsburg found it necessary to demonstrate over and over again that gender-based laws long labeled favorable to women in fact undermined their equality in ways that harmed them.

19 Oral Argument at 31:44–32:40, *Califano v. Goldfarb*, 430 U.S. 199 (1977) (No. 75-699), available at http://www.oyez.org/cases/1970-1979/1974_73-1892/argument.

20 Brief of ACLU, *supra* note 3, at 8.

21 Forgive me for citing Wikipedia, but it is instructive on this point. Yin, it explains, "is characterized as slow, soft, yielding, diffuse, cold, wet, and passive; and is associated with water, earth, the moon, femininity and nighttime. Yang, by contrast, is fast, hard, solid, focused, hot, dry, and aggressive; and is associated with fire, sky, the sun, masculinity and daytime." Yin and yang, WIKIPEDIA, http://en.wikipedia.org/wiki/Yin_and_yang (last visited Feb. 11, 2013). The Supreme Court, upholding the exclusion of women from law practice in 1873, embedded yin and yang in constitutional doctrine:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the

their compliance with sex-appropriate role behavior or penalized them for deviation from it. She saw that male and female were viewed in law and beyond as a natural duality—polar opposites interconnected and interdependent by nature or divine design—and she understood that you couldn't untie one half of that knot. The problem, as she viewed it, was not that some individuals were exclusively or primarily breadwinners and some exclusively or primarily homemakers or that one role was more or less valuable than the other, but that *these roles were treated in law as naturally, appropriately and invariably sex-based*. This "sex-role pigeon-holing" failed to recognize the more complicated and varied reality of men's and women's interests, needs, desires, competencies, predilections, and home and work lives, to the disadvantage of both.²²

This brings me to Ruth Ginsburg's favorite case, *Weinberger v. Wiesenfeld*,²³ a case she molded from the drafting of the complaint she filed in federal court to the oral argument she made in the Supreme Court. It was her favorite because it was a perfect example of why sex-role pigeon-holing should be unconstitutional.

I remember her oral argument, in January of 1975. I came all the way from California to hear it and it was definitely worth the trip. First, she laid out the facts: Paula Wiesenfeld, a schoolteacher and the family's primary wage earner, died in childbirth. Newly widowed father Stephen Wiesenfeld vowed to care for his infant son, Jason Paul. If he were a widow rather than a widower, he would have been eligible for a social security benefit to help him do just that. And here's Justice Ginsburg's opening line to the Court: "Stephen Wiesenfeld's case concerns the entitlement of a female wage earner's family to social insurance of the same quality as that accorded a family of a male wage earner." Later in the argument, she elaborated:

This absolute exclusion, based on gender per se, operates to the disadvantage of female workers, their surviving spouses and their children. It denies the female worker social insurance family coverage

nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.

Bradwell v. Illinois, 83 U.S. 130, 141 (1872). Until *Reed*, the Court maintained the position that the Constitution does not preclude the states from "drawing a sharp line between the sexes." *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948).

22 Ruth Bader Ginsburg, *Women's Right to Full Participation in Shaping Society's Course: An Evolving Constitutional Precept*, in *TOWARD THE SECOND DECADE: THE IMPACT OF THE WOMEN'S MOVEMENT ON AMERICAN INSTITUTIONS* 176 (Betty Justice & Renate Pore eds., 1981).

23 420 U.S. 636 (1975).

of the same quality as the coverage available under the account of a male worker. It denies the surviving spouse of a female worker the opportunity to care personally for his child, an opportunity afforded the surviving spouse of a male worker, and it denies the motherless child an opportunity for parental care afforded the fatherless child. It is Appellee's position that this three-fold discrimination violates the constitutional rights of Paula, Stephen and Jason Paul Wiesenfeld to the Equal Protection of the laws²⁴

At that moment, I knew she would win the case. And she did—eight votes to strike down the statute (Justice Douglas was ill and didn't participate). Justice Brennan's opinion for five of the eight Justices not only held in her male client's favor but faithfully tracked her argument about the three-fold discrimination, deriving from the initial discounting of Paula Wiesenfeld's economic contribution to her family.²⁵ Even Justice Rehnquist concurred in *Wiesenfeld*, but he did so on the basis of the discrimination against the child, Jason Paul.

The next year, in his dissent in *Craig v. Boren*, Rehnquist contended that men did not require the protection against sex discrimination that heightened scrutiny would entail and in a cranky footnote rejected Ginsburg's approach to sex discrimination cases: "I am not unaware of the argument from time to time advanced," he said, "that all discriminations between the sexes ultimately redound to the detriment of females, because they tend to reinforce "old notions" restricting the roles and opportunities of women." The argument, he said, had been found "to carry little weight" in some previous cases.²⁶ Justice

24 Oral Argument at 23:18 ("opening line"), 28:26 ("this absolute exclusion"), *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) (No. 73-1892), available at http://www.oyez.org/cases/1970-1979/1974_73-1892/argument. The argument was held January 20, 1975.

25 I leave it to my audience to speculate whether Justice Brennan's apparent sensitivity to the nuances of Ruth Ginsburg's argument in *Wiesenfeld* might have had something to do with the fact that he had finally overcome his qualms and hired his first woman clerk, whom he assigned to work with him on the *Wiesenfeld* opinion. That first female Brennan clerk, Marsha Berzon, now serves on the United States Court of Appeals for the Ninth Circuit. For the story of Justice Brennan and women clerks, see SETH STERN & STEPHEN WERMIEL, JUSTICE BRENNAN: LIBERAL CHAMPION 385-89, 399-402, 404-05 (2010).

26 *Craig* was argued the same day as *Califano v. Goldfarb*, 430 U.S. 199 (1977), which struck down the Social Security survivors benefit provision that granted benefits to widows of covered employees but to widowers only when deceased wage-earning wife had provided more than one half of his support. Ginsburg called *Goldfarb* "*Wiesenfeld* without the baby." See, e.g., Deborah L. Markowitz, *In Pursuit of Equality: One Woman's Work to Change the Law*, 14 WOMEN'S RTS. L. REP. 335, 352-53 (1989). In her *Goldfarb* brief, she elaborated upon her position against sex-role pigeon-holing: "The . . . gender classification ignores the fact of family economic interdependence and is unconcerned with the woman worker, her status, her role

Rehnquist notwithstanding, three significant gender cases following *Wiesenfeld* and *Goldfarb* exhibited the influence of Ginsburg's one-eyed sex-role pigeon-holing view of gender equality.²⁷ Her work, embedded in the Court's jurisprudence, in turn changed how federal and state courts throughout the country approached and decided cases of gender discrimination.

CONCLUSION

Professor Ruth Ginsburg didn't get everything she asked for or wanted from the conservative Burger Court of the 1970s, but she did succeed in her core effort. By 1980, the Court applied heightened, albeit not "strict," scrutiny to gender cases, and—informed by the Ginsburg analysis of the nature and harm of classifying by sex—required (with occasional lapses) that government direct its law and policy to the function to be performed rather than the sex of the performer. In mid-summer 1980, Ruth Ginsburg, her historic litigation project complete, left teaching and Columbia Law School for Washington D.C. and the judiciary.²⁸

and interest in insuring family security. Rather, the scheme underestimates women's contributions to family support, overestimates men's, and places an official imprimatur on categorization of women as second-class workers. By rewarding men's employment more than women's, the arrangement has all the earmarks of self-fulfilling prophecy: it impedes removal of artificial barriers to recognition of women's full, human potential, and retards society's progress toward equal opportunity, free from gender-based discrimination." Brief for the Appellee at 8, *Goldfarb*, 430 U.S. 199 (No. 75-699), 1976 WL 181387.

27 *Califano v. Westcott*, 433 U.S. 76 (1979) (basing aid to families with dependent children on unemployment of father but not mother violates equal protection); *Orr v. Orr*, 440 U.S. 268 (1979) (Alabama woman-only alimony violates equal protection; alimony should be based on dependency during marriage and need, not sex); *Wengler v. Druggists Mut. Ins.Co.*, 446 U.S. 142 (1980) (Workers Compensation death benefits for wives of employees, but husbands only if they prove themselves dependent, violates equal protection; such benefits must be bestowed based on factors other than sex). In each of these cases, the ACLU, represented by Ginsburg, participated in *amicus curiae* briefs.

28 With her she took the law school's recently hired Professor Martin Ginsburg. But eight years later, Ruth and Martin Ginsburg's daughter, Jane Ginsburg, joined the Columbia law faculty. As far as I have been able to determine, this was the third first for the Ginsburgs at Columbia—first woman tenured faculty member (Ruth), first faculty married couple (Ruth and Marty), and first faculty daughter of faculty parents (Jane).